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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/505,147

08/20/2004

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25944 7590 02/23/2009  
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/505,147 | <b>Applicant(s)</b><br>KOBAYASHI ET AL. |  |
|                              | <b>Examiner</b><br>Carolyn A. Paden  | <b>Art Unit</b><br>1794                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9-10-08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over QP Corporation (Shunsuke 2000-308469) in view of Yamauchi (5,976,587) and QP Corporation (Toru 2000-210048) and Rooney taken together and further in view of the admitted state of the prior art.

Shunsuki discloses the preparation of container-packed mayonnaise. The claims appear to differ from Shunsuki in the recitation of the amount of oxygen that is in the mayonnaise package. But packaging foods in oxygen-free containers is known in the art as shown by Yamauchi. Further replacing oxygen-containing air from emulsions to extend the shelf-life of mayonnaise is well known in the art as shown by Toru. With the references of Shunsuke, Yamauchi and Toru before him, it would have been obvious to extent the shelf-

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life of the mayonnaise of Shunsuki in the oxygen container of Yamauchi with the nitrogen flush of Toru to extend the shelf-life of the mayonnaise. It is appreciated that the particular amount of oxygen is not mentioned but one of ordinary skill in the art would be expected to adjust the oxygen content of the mayonnaise in order to achieve an optimal product shelf-life. It is appreciated that an oxygen barrier container is not mentioned but oxygen barrier containers are well known in the art as taught by Rooney (page 1, lines 1-2 and page 4, paragraph 1.2.2.1). Applicant admits at page 1, lines 19-23 of his specification that metal cans and glass bottles are known in the art to be impermeable to oxygen. Emulsions such as salad dressings and mayonnaise have been packaged in glass containers for a long time, as evidenced by a reflection on the salad dressing aisle at the local grocery store.

Applicant argues that Shunsuke, Yamauchi, Toru and Rooney do not teach or suggest an emulsified food product that has a dissolved oxygen concentration of 0.8 to 8.1% O<sub>2</sub> immediately after manufacturing. The recitation “immediately after manufacturing” is defined in the specification at page 6, to include the same day or the next day. Further applicant admits that the dissolved oxygen tend to

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decline upon storage anyway. Applicant admits at page 3, lines 13-16 that the dissolved oxygen content of common commercially available oil in water type emulsified foods is from 10-15%. But this is when no attempt is made to control the extent of dissolved oxygen in foods. It is clear from the teachings of the secondary references that it is advantageous to limit the oxygen in packaged foods. Given the teachings of the references, it would have been obvious to further limit the oxygen in Shunsuke to enhance the shelf life of packed emulsions. It is appreciated that the exact amount of oxygen is not mentioned but one of ordinary skill in the art would expect the oxygen level of Shunsuke to fall within the range of the claims immediately after manufacturing.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action

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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

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PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794